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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of the Non-)
Accounting Safeguards of Sections)
271 and 272 of the Communications)
Act of 1934, as amended;)
)
and)
)
Regulatory Treatment of LEC)
Provision of Interexchange)
Services Originating in the LEC's)
Local Exchange Area)

CC Docket No. 96-149

DOCKET FILE COPY ORIGINAL

REPLY COMMENTS OF THE INDEPENDENT COALITION

The Independent Coalition (the "Coalition"),¹ by its attorneys and pursuant to the Notice of Proposed Rulemaking released July 18, 1996 ("NPRM") and the Commission's August 9, 1996 Order,² hereby submits these Reply Comments.³ The Coalition strongly opposes the proposals of some commenting parties that independent LEC affiliates providing interexchange services within the LEC's local exchange area should be subjected to greater regulatory requirements and burdens than are currently

^{1/} See Attachment A setting forth members of the Coalition.

^{2/} The Commission established a separate pleading cycle, with reply comments due September 13, 1996, with respect to issues raised in the NPRM relating to the regulatory treatment of independent local exchange companies ("LECs") providing interexchange services. See Order, DA 96-1281 (rel. Aug. 9, 1996).

^{3/} Unless otherwise indicated, citations herein refer to comments filed on August 29, 1996 in the proceeding captioned above.

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applied. Instead, the Coalition supports the elimination of the existing structural separation requirements imposed on independent LECs as the condition for non-dominant treatment. The public interest would be best served by eliminating existing separation requirements, thereby fostering efficient and fair competition and the provision of quality services to users located in the areas served by Independents. In support of this position, the Coalition shows the following:

The Coalition is comprised of small and rural independent LECs which, through affiliates, either currently offer, or plan to offer, interexchange services within their respective telephone exchange areas. The Coalition members typically provide interexchange services through affiliates which combine the tariffed common carrier services of the parent telephone company, including access services, with the resold services of interexchange carriers. These affiliates typically limit the market of their service offerings to subscribers within the franchised service area of the affiliated telephone company. Coalition members will be directly affected by the Commission's decisions in this docket and are, accordingly, parties in interest.

I. Experience Demonstrates That There Is No Need for Burdensome Regulation of Independent LEC Interexchange Operations.

Under current Commission rules, the interstate interexchange operations of LECs are treated as "dominant" unless LECs provide interstate services through a separate affiliate which complies with three requirements: 1) no joint ownership of transmission or

switching facilities with the affiliated telephone company; 2) maintenance of separate books and accounts; and 3) acquisition of the common carrier services of the LEC at tariffed rates, terms and conditions.⁴ Only by complying with these structural separation requirements can the interstate services operation be treated as "non-dominant."

For more than a decade, independent affiliates have been providing a competitive alternative to consumers in the less densely populated and rural portions of the country under this regulatory regime. The Coalition is unaware, and there is no indication in other parties' comments, that any complaint has been lodged against a rural LEC or its affiliate alleging anti-competitive activity during this period. Indeed, as the Commission itself notes, its experience with regulating the affiliates of independent LECs providing interexchange services "suggests that our existing safeguards have worked reasonably well and generally have been effective"⁵

In general, the Coalition members have chosen to provide interexchange services through affiliates only in order to ensure that they avoid classification as a "dominant" carrier. Under the Commission's Rules, telephone companies providing interexchange services directly, rather than through an affiliate, must generally seek entry certification and file cost-

⁴/ Policy and Rules Concerning Rates for Competitive Carrier Services and Facilities Therefor, CC Docket No. 79-252, Fifth Report and Order, 98 FCC 2d 1191 at 1198 (1984).

⁵/ NPRM at para. 146. As explained herein, however, these current provisions are burdensome and should be eliminated.

justified tariffs, the effectiveness of which is postponed by significant notice periods.⁶ Even though significant expenditures of time and money are associated with creation, maintenance and operation through an affiliate, these expenditures are relatively small when compared to the enormous regulatory and administrative costs and competitive disadvantage associated with treatment as a "dominant" carrier.

II. No Increase in Regulatory Burden on Independent Affiliates is Warranted.

The Commission established this docket to consider the regulatory treatment of both the BOCs and Independents which will provide interexchange services in a robust, competitive market.⁷ In segregating the proceeding into discrete examinations of the appropriate regulatory treatment of BOCs on the one hand, and of Independents in the instant case, the Commission has affirmed its own long-standing recognition,⁸ as further codified recently by Congress,⁹ that regulatory treatment of independent rural telephone companies necessarily requires consideration of their distinct attributes and characteristics. It is appropriate that the Commission incorporate these considerations into this

⁶/ See 47 C.F.R. §§ 61.38, 61.58 and 63.01.

⁷/ The level of competition in the interexchange marketplace was recognized by the Commission recently in its deregulation of AT&T Corp. See Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, Order, 11 FCC Rcd 3271 (1996).

⁸/ For example, the Commission's Rules allow for small LEC access tariff filings under 47 C.F.R. 61.49 and less detailed accounting requirements under 47 C.F.R. 32.11.

⁹/ See 47 U.S.C. §§ 153(37) and 251(f).

examination of competitive activity in a vigorous marketplace.

Accordingly, it is also appropriate to define the factual parameters within which this inquiry occurs. First, as recognized even by AT&T Corp.,

[the geographic service area of] independent LECs extend[s] over smaller geographic areas [Independent LECs] generally serve less densely populated areas, and inter-exchange carriers often interconnect to independent LEC exchanges only indirectly Moreover, it is far less likely that an independent LEC will be providing access at both the originating and the terminating ends of a call¹⁰

Second, proponents of increased regulatory burdens on independent LECs suggest that the Commission must focus on "monopoly" control over access facilities¹¹ to define the market within which Independents provide interexchange services. However, access is highly regulated and subject to the scrutiny of both regulators and access customers. Whether market power can be exercised from this position is, therefore, questionable. Even assuming some theoretical potential advantage, there is no advantage in reality. The access relationships between independent LECs and all interexchange carriers are governed strictly by the Commission's access charge rules and equal access requirements, and in most cases also by jurisdictional separations and access rate development rules.¹² In short, the

^{10/} Comments of AT&T Corp. at 11. As discussed herein, AT&T also is ironically a proponent of increased regulatory burdens on LEC-affiliated interexchange carriers.

^{11/} See, e.g., Comments of AT&T at 3-5; Comments of MCI Telecommunications Corporation at 5; Comments of Teleport Communications Group at 2.

^{12/} See, generally, 47 C.F.R. Parts 36, 61 and 69.

so-called "bottleneck" access to the local network is regulated by the Commission while the provision of interexchange services is open to vigorous competition.

AT&T recognizes that BOCs and Independents are "treated differently under the Communications Act" but avers that these differences are not relevant in the context of interexchange services.¹³ AT&T cites Section 272 of the Act as imposing standards which BOCs must achieve prior to entering the interexchange market. AT&T suggests that, because Independents are not subject to these statutory requirements, the Commission should impose the same regulatory requirements it will impose on BOCs on independent LECs until their bottlenecks have eroded.¹⁴

To the contrary, independent LECs have experience of over a decade of providing interexchange service. The silence of Congress with respect to Independents' provision of interexchange services speaks strongly and eloquently in favor of avoiding increased regulatory oversight. Moreover, Congress enacted explicit provisions that purposefully capture the differences between BOCs and Independents. The statutory differentiation accurately acknowledges the insignificant power of the smaller LECs in their limited markets and the benefits of not overburdening them with unreasonable, regulatory overkill.

Despite its initial proposal to extend greater regulatory control over independent LECs' provision of interexchange service, AT&T later moderates its request by limiting the

¹³/ Comments of AT&T at 2.

¹⁴/ Comments of AT&T at 2-3.

application of its proposal to Tier I LECs. AT&T recognizes the legitimate concern of Independents regarding regulatory burdens:

The Commission could reasonably conclude that the costs of imposing these requirements (with the exception of the equal access requirements) on small carriers outweigh the likely benefits, given the scope of the smaller carriers' operation and the more limited competitive harm they could inflict.¹⁵

The Coalition respectfully urges the Commission to consider the fact that it is primarily the largest interexchange carriers, soon to enter the local exchange market themselves, that are striving to impose increased regulation on Independents. The Commission should reject, or at least discount, these telecommunications giants' suggestions that the fledgling long distance operations of the smaller LECs should be burdened with more regulation than even the largest interexchange carrier endures today. There is no sound public policy to justify forcing Independents to shoulder regulation of which the likes of AT&T and MCI, which are thousands of multiples larger than the collective size of Independents, are relieved. Instead, the Commission should recognize AT&T's and the others' protests for what they really are: strategic, preemptive attempts to distract the Commission from the purpose of this proceeding -- to place the interexchange operations of smaller LECs on a level regulatory playing field with AT&T and MCI, which are already treated as non-dominant.

¹⁵/ Comments of AT&T 11.

III. The Structural Separation Requirements Currently Applied to Independent LECs Should Be Eliminated.

Not only should the Commission reject the proposals of some parties to extend more burdensome regulation to non-Tier I LECs, but it should also take action to recognize that the public interest will be served by eliminating the current structural separation rules which experience has shown to be unnecessary. Accordingly, the Commission should adopt the recommendations of USTA and NTCA, among others, which explain why the current rules are both unnecessary and burdensome to Independents. The alleged dangers of anti-competitive behavior of Independents either lack a conceptual basis and/or defy actual experience over the last decade.

The long distance rates of the vast majority of smaller Independents' affiliates are constrained by the prices they pay other facilities-based carriers for services they resell.¹⁶ As already discussed above, the ability to cross-subsidize long distance service with local or access revenues, even under existing regulation, is highly speculative given the current federal regulation of access and state regulation of other rates and terms.¹⁷

As NTCA observes, Independents may want to create and maintain separate subsidiaries to provide interexchange service, but that decision should depend solely on their business needs,

¹⁶/ Comments of USTA at 6, n. 8.

¹⁷/ Comments of USTA at 7-8.

not on the existence of regulatory requirements.¹⁸ These companies should not be prevented from "leveraging" their vigorous "locally-owned and operated" virtues to the benefit of their subscribers only to satisfy an unnecessary structural separation requirement.

Most serious from the perspective of rural consumers is the fact that compliance with the regulations, or the potential applicability of regulation, either imposes costs which must be borne by long distance users or causes Independents to choose not to enter the interexchange market, thereby reducing customer choice.¹⁹ The existence of burdensome, intrusive regulation can have the regrettable effect of frustrating the provision of service to users by those carriers most committed and specialized in service to independent LEC areas -- the rural Independents themselves. The emergence of competition elsewhere, and for only the high volume customers in rural areas, has not significantly changed the realization that Independents are the only carriers really interested in, and dedicated to, bringing and maintaining quality service to all the residential and business users in their rural communities.

IV. Conclusion

The Commission must recognize that its actions in this docket will have a significant influence on the level of competition in rural portions of the country. Increased regulatory burdens will cause members of the Coalition who are

¹⁸/ Comments of NTCA at 4.

¹⁹/ Comments of USTA at 11-12.

considering the provision of interexchange services to refrain from entering the market and will cause members of the Coalition who are currently providing interexchange service to withdraw from the marketplace. Moreover, continuation of existing regulatory burdens on the members of the Coalition and other rural Independents will also result in a similar reduction of competitive choices for rural consumers. Rather than fostering competition, inappropriate regulatory burdens will, instead, eliminate competitive interexchange service providers in rural America.

Accordingly, the Commission should reject the misplaced proposals of the large IXC's suggesting that greater regulatory requirements should be placed on independent LECs that also provide long distance service to their subscribers. The record does not support any policy need for such requirements. Instead, and for the same reasons, the current rules requiring structural separation of Independents' interexchange operations should be eliminated.

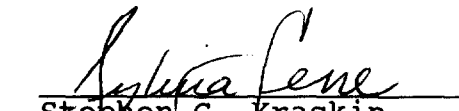
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September 13, 1996

Respectfully submitted,

THE INDEPENDENT COALITION


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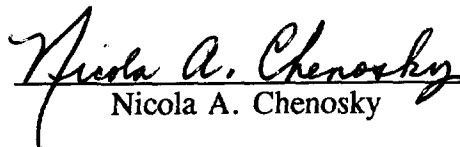
Attachment A

Independent Coalition Members

Adams Telephone Cooperative
Bentleyville Telephone Company
Chariton Valley Telephone Corporation
Chautauqua and Erie Telephone Corporation
Concord Telephone Company
Egyptian Telephone Cooperative Association
Farmers Telephone Cooperative, Inc.
Home Telephone Company
Horry Telephone Cooperative, Inc.
McDonough Telephone Cooperative
Mid-Century Telephone Cooperative, Inc.
Northeast Florida Telephone Company, Inc.
North-Eastern Pennsylvania Telephone Company
Pattersonville Telephone Company
Pine Belt Telephone Company, Inc.
Poka Lambro Telephone Cooperative, Inc.
Ringgold Telephone Company
Smithville Telephone Company, Inc.
Warwick Valley Telephone Company
XIT Rural Telephone Cooperative, Inc.

CERTIFICATE OF SERVICE

I, Nicola A. Chenosky, hereby certify that a copy of the foregoing **Reply Comments of The Independent Coalition in CC Docket No. 96-149** was served on this 13th day of September 1996, by first class, U.S. mail, postage prepaid, to the following parties:


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